# RB 2002-04 Board and Directorship Responsibilities

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Board and Directorship Responsibilities — Revised — November, 2009

### Introduction

Corporate governance in this country has been the target of a fair amount of criticism in recent months — much of it justified. This Bulletin, therefore, is intended to clarify the Department's position on the duties and responsibilities of credit union directors. It covers the basic principles of a credit union board's function and responsibilities, but it is not all-inclusive. It also highlights the areas that the Department perceives to be minimal requirements for the functioning of a credit union board of directors.

Section 5.09 of the credit union's bylaws enumerates the duties and powers of directors. In particular, this section provides that the board of directors has the authority and responsibility for the general direction and control of the business affairs, funds and records of the credit union and is responsible for its safety and soundness. In addition, as directed by Title 2, Chapter 22 of the Business Organizations Code, directors must discharge their duties in good faith, with ordinary care, and in a manner the directors reasonably

believe is in the best interest of the credit union. Therefore, directors must have a general knowledge of the daily operation of the credit union, and must act in good faith and exercise due diligence in performing their duties. Due diligence includes asking questions and requesting additional information in order to be fully informed and understand the actions the board takes as well as the potential ramifications or risks of the actions. Directors are also accountable to the credit union's membership and its regulators.

Because of the nature of the credit union business, directors have been placed in a position of trust and honor. Their selection to this position implies the highest confidence of the members in the individual's integrity, business sense and morality, and a person who is capable of fostering the membership trust. The credit union business requires a higher degree of accountability from those who choose to serve as directors. Both statutory and common law have placed the responsibility for credit union management firmly on the members of a credit union's board of directors. The management of the credit union's daily affairs may be delegated to an officer, but delegation of responsibility for consequences resulting from unsound or imprudent policies and practices cannot be transferred.

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Responsible, competent directors are crucial to the success of any financial institution. The job of a credit union director is never stagnant, and each situation provides an opportunity to learn and grow. Serving as a director requires commitment and dedication and the duties must not be taken lightly.

#### DIRECTORSHIP POLICY

Each board of directors should develop a Directorship Policy that sets requirements and guidelines for directors, and clearly states the board's view of its role in guiding the credit union. The following areas should be addressed in the Directorship Policy. Please note that these are recommended minimums, and should not be considered an inclusive list of characteristics for an effective board.

Attendance. Directors cannot fulfill their responsibilities if they do not attend board meetings on a regular basis. Each director must devote sufficient time and effort to remain informed and aware of issues affecting the credit union.

Compliance. The board must maintain the integrity of the credit union by ensuring compliance with applicable laws and regulations. New or amended legal and regulatory requirements must be understood and properly implemented. Profession counsel should be sought when necessary to ensure that directors and management have an appropriate understanding of legal and regulatory requirements.

Continuity. The board must ensure the credit union remains in sound financial and operational condition over time. Preserving the credit union as a viable institution requires proper board oversight in crucial areas such as strategic planning, capital accumulation, asset quality, liquidity, funds and risk management, and management development and succession.

Hiring and retaining competent management for the credit union is one of the board's most important duties. Appropriate performance standards must be developed for the credit union's president. The president's performance should be formally and objectively reviewed against these standards at least annually. Boards of directors must be willing to take appropriate actions, up to and including removal, when

managers lack the competence or integrity to operate the credit union in a safe and sound manner.

**Education**. Education is crucial to being an effective director. Credit unions operate in a dynamic, highly regulated environment, and the need for informed, competent directors has never been greater. Extensive education resources are available for credit union directors. Ongoing education is essential to ensure that directors understand and appropriately control the risks inherent in operating a depository financial institution.

**Examinations and Audits**. The board is responsible for reviewing all reports of examination and audits performed by outside sources and implementing any changes which are necessary to correct the deficiencies contained therein.

**Insurance**. The board must ensure that the credit union has adequate insurance coverage for contingences, which should receive at least annual review for reaffirmation and possible restructuring.

**Integrity**. A director must maintain the highest standards of personal conduct. Directors must demonstrate integrity, dedication, and cooperation. Maintaining the confidentiality of credit union business and individual member information is essential.

**Internal Control**. The board must establish procedures for conducting audits whether it be by a committee of the board or by an outside firm. (Examinations conducted by the Department do not substitute for an audit.)

Leadership. Effective directors use good judgment and work for the best interest of the membership. The board's responsibility is to ensure that adequate policies, procedures, management, and planning are in place; the board should not be led or simply monitor results after the fact. Care should be taken, however, not to assume responsibility for conducting the credit union's daily operations. Conversely, management should not usurp the director's role. The board should direct and management should manage.

Management Information System. The board is responsible for establishing a system whereby the credit union's affairs are presented to them in a manner which will allow reasonable comprehension of the information presented and which presents fairly the credit union's activities.

**Policy**. Establishing sound policies is one of the board's more important functions. Policies should clearly and concisely state intentions, limitations, and controls that will dictate a specific course of action. Policies should be comprehensive, reduced to writing, approved by the board, and reviewed and revised or reaffirmed at least annually. The board should also make certain that its policies are fully understood and being adhered to by those who are subject to such policies.

Records of Board Action. It is the responsibility of the board to insure that adequate minutes and other records of board actions, including pertinent discussions, dissenting opinions, etc. be maintained.

Removal. Ideally, all credit union directors will be strong representatives for the membership. The policy should, however, discuss necessary actions when directors are not properly fulfilling their responsibilities. Events and circumstances that would warrant removal of a credit union official, as provided by Section 122.055(c) of the Texas Credit Union Act, should be outlined.

Self Evaluation. The Directorship Policy should be made part of the credit union's overall operating policies, and should be reviewed on a regular basis. Each board of directors should objectively analyze its performance and compliance with the Directorship Policy at least annually.

## **CONCLUSIONS**

It is incumbent on each director to conscientiously work at being a director. No one is immune from potential liability; nevertheless, if honesty and diligence to duty prevails on the credit union's board, the word "liability" should exist only as it relates to the credit union's normal course of business activities.